

TITLE 78 RECODIFICATION - TITLE 78B**CHAPTER 1**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78B, Chapter 1, Jury and Witness Act.

Highlighted Provisions:

This bill:

►

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**RENUMBERS AND AMENDS:**

78B-1-101, (Renumbered from 78-46-1, as last amended by Laws of Utah 2001,
Chapter 46)

78B-1-102, (Renumbered from 78-46-4, as last amended by Laws of Utah 2003,
Chapter 194)

78B-1-103, (Renumbered from 78-46-2, as last amended by Laws of Utah 2003,
Chapter 194)

78B-1-104, (Renumbered from 78-46-5, as last amended by Laws of Utah 2007,
Chapter 275)

78B-1-105, (Renumbered from 78-46-7, as last amended by Laws of Utah 2002,
Chapter 22)

78B-1-106, (Renumbered from 78-46-10, as last amended by Laws of Utah 1992,
Chapter 219)

78B-1-107, (Renumbered from 78-46-12, as last amended by Laws of Utah 2003,
Chapter 194)

- 32 **78B-1-108**, (Renumbered from 78-46-14, as enacted by Laws of Utah 1979, Chapter
33 130)
- 34 **78B-1-109**, (Renumbered from 78-46-15, as last amended by Laws of Utah 2003,
35 Chapter 194)
- 36 **78B-1-110**, (Renumbered from 78-46-19, as last amended by Laws of Utah 2001,
37 Chapter 308)
- 38 **78B-1-111**, (Renumbered from 78-46-29, as renumbered and amended by Laws of Utah
39 2001, Chapter 46)
- 40 **78B-1-112**, (Renumbered from 78-46-17, as last amended by Laws of Utah 1992,
41 Chapter 219)
- 42 **78B-1-113**, (Renumbered from 78-46-16, as last amended by Laws of Utah 1989,
43 Chapter 153)
- 44 **78B-1-114**, (Renumbered from 78-46-37, as renumbered and amended by Laws of Utah
45 2001, Chapter 46)
- 46 **78B-1-115**, (Renumbered from 78-46-20, as last amended by Laws of Utah 2003,
47 Chapter 194)
- 48 **78B-1-116**, (Renumbered from 78-46-21, as last amended by Laws of Utah 2003,
49 Chapter 194)
- 50 **78B-1-117**, (Renumbered from 78-46-25, as renumbered and amended by Laws of Utah
51 2001, Chapter 46)
- 52 **78B-1-118**, (Renumbered from 78-46-24, as renumbered and amended by Laws of Utah
53 2001, Chapter 46)
- 54 **78B-1-119**, (Renumbered from 78-46-28, as renumbered and amended by Laws of Utah
55 2001, Chapter 46)
- 56 **78B-1-120**, (Renumbered from 78-46-26, as renumbered and amended by Laws of Utah
57 2001, Chapter 46)
- 58 **78B-1-121**, (Renumbered from 78-46-27, as renumbered and amended by Laws of Utah
59 2001, Chapter 46)
- 60 **78B-1-122**, (Renumbered from 78-46-31, as renumbered and amended by Laws of Utah
61 2001, Chapter 46)
- 62 **78B-1-123**, (Renumbered from 78-46-41, as renumbered and amended by Laws of Utah

63 2001, Chapter 46)

64 **78B-1-124**, (Renumbered from 78-46-38, as renumbered and amended by Laws of Utah

65 2001, Chapter 46)

66 **78B-1-125**, (Renumbered from 78-46-39, as renumbered and amended by Laws of Utah

67 2001, Chapter 46)

68 **78B-1-126**, (Renumbered from 78-46-40, as renumbered and amended by Laws of Utah

69 2001, Chapter 46)

70 **78B-1-127**, (Renumbered from 78-24-2, as enacted by Laws of Utah 1984, Chapter 35)

71 **78B-1-128**, (Renumbered from 78-24-1, Utah Code Annotated 1953)

72 **78B-1-129**, (Renumbered from 78-24-5, Utah Code Annotated 1953)

73 **78B-1-130**, (Renumbered from 78-24-6, Utah Code Annotated 1953)

74 **78B-1-131**, (Renumbered from 78-24-7, Utah Code Annotated 1953)

75 **78B-1-132**, (Renumbered from 78-24-3, Utah Code Annotated 1953)

76 **78B-1-133**, (Renumbered from 78-24-9, Utah Code Annotated 1953)

77 **78B-1-134**, (Renumbered from 78-24-10, as last amended by Laws of Utah 1995,

78 Chapter 20)

79 **78B-1-135**, (Renumbered from 78-24-11, Utah Code Annotated 1953)

80 **78B-1-136**, (Renumbered from 78-24-8, as last amended by Laws of Utah 1990,

81 Chapter 45)

82 **78B-1-137**, (Renumbered from 78-24-12, Utah Code Annotated 1953)

83 **78B-1-138**, (Renumbered from 78-24-13, as last amended by Laws of Utah 1995,

84 Chapter 20)

85 **78B-1-139**, (Renumbered from 78-24-14, as last amended by Laws of Utah 2007,

86 Chapter 306)

87 **78B-1-140**, (Renumbered from 78-24-15, Utah Code Annotated 1953)

88 **78B-1-141**, (Renumbered from 78-24-16, Utah Code Annotated 1953)

89 **78B-1-142**, (Renumbered from 78-24-17, Utah Code Annotated 1953)

90 **78B-1-143**, (Renumbered from 78-24-18, as last amended by Laws of Utah 1995,

91 Chapter 20)

92 **78B-1-144**, (Renumbered from 78-24-19, Utah Code Annotated 1953)

93 **78B-1-145**, (Renumbered from 78-24-4, as last amended by Laws of Utah 1997,
94 Chapter 215)
95 **78B-1-146**, (Renumbered from 78-46-30, as renumbered and amended by Laws of Utah
96 2001, Chapter 46)
97 **78B-1-147**, (Renumbered from 78-46-35, as renumbered and amended by Laws of Utah
98 2001, Chapter 46)
99 **78B-1-148**, (Renumbered from 78-46-34, as renumbered and amended by Laws of Utah
100 2001, Chapter 46)
101 **78B-1-149**, (Renumbered from 78-46-32, as renumbered and amended by Laws of Utah
102 2001, Chapter 46)
103 **78B-1-150**, (Renumbered from 78-46-33, as renumbered and amended by Laws of Utah
104 2001, Chapter 46)
105 **78B-1-151**, (Renumbered from 78-24-20, as enacted by Laws of Utah 2006, Chapter
106 41)
107 **78B-1-201**, (Renumbered from 78-24a-1, as last amended by Laws of Utah 1995,
108 Chapter 118)
109 **78B-1-202**, (Renumbered from 78-24a-2, as last amended by Laws of Utah 1995,
110 Chapter 118)
111 **78B-1-203**, (Renumbered from 78-24a-3, as enacted by Laws of Utah 1983, Chapter
112 288)
113 **78B-1-204**, (Renumbered from 78-24a-4, as enacted by Laws of Utah 1983, Chapter
114 288)
115 **78B-1-205**, (Renumbered from 78-24a-5, as enacted by Laws of Utah 1983, Chapter
116 288)
117 **78B-1-206**, (Renumbered from 78-24a-6, as enacted by Laws of Utah 1983, Chapter
118 288)
119 **78B-1-207**, (Renumbered from 78-24a-7, as enacted by Laws of Utah 1983, Chapter
120 288)
121 **78B-1-208**, (Renumbered from 78-24a-8, as enacted by Laws of Utah 1983, Chapter
122 288)
123 **78B-1-209**, (Renumbered from 78-24a-9, as enacted by Laws of Utah 1983, Chapter

124 288)
125 **78B-1-210**, (Renumbered from 78-24a-10, as enacted by Laws of Utah 1983, Chapter
126 288)
127 **78B-1-211**, (Renumbered from 78-24a-11, as enacted by Laws of Utah 1983, Chapter
128 288)

129 REPEALS:

130 **78-46-3**, as last amended by Laws of Utah 1992, Chapter 219
131 **78-46-8**, as last amended by Laws of Utah 1992, Chapter 219
132 **78-46-36**, as renumbered and amended by Laws of Utah 2001, Chapter 46

133

134 *Be it enacted by the Legislature of the state of Utah:*

135 Section 1. Section **78B-1-101**, which is renumbered from Section 78-46-1 is
136 renumbered and amended to read:

137 **Part 1. Jury and Witness Act**

138 ~~[78-46-1].~~ **78B-1-101. Title.**

139 This ~~[chapter]~~ part is known as the "Jury and Witness Act."

140 Section 2. Section **78B-1-102**, which is renumbered from Section 78-46-4 is
141 renumbered and amended to read:

142 ~~[78-46-4].~~ **78B-1-102. Definitions.**

143 As used in this part:

144 (1) "Clerk" or "clerk of the court" means the person so designated by title and includes
145 any deputy clerk.

146 (2) "Court" means trial ~~[courts]~~ court.

147 (3) "Jury" means a body of persons temporarily selected from the citizens of a
148 particular county invested with the power to present and indict a person for a public offense or
149 to try a question of fact.

150 (4) "Master jury list" means the source lists as prescribed by the Judicial Council under
151 Section ~~[78-46-10]~~ 78B-1-106.

152 (5) "Public necessity" means circumstances in which services performed by the
153 prospective juror to members of the public in either a public or a private capacity cannot

adequately be performed by others.

(6) "Qualified jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.

(7) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction and sworn to try and determine by verdict a question of fact.

(8) "Undue hardship" means circumstances in which the prospective juror would:

(a) be required to abandon a person under his or her personal care or incur the cost of substitute care ~~[that]~~ which is unreasonable under the circumstances;

(b) suffer extreme physical hardship due to an illness, injury, or disability; or

(c) incur substantial costs or lost opportunities due to missing an event that was scheduled prior to the initial notice of potential jury service.

Section 3. Section **78B-1-103**, which is renumbered from Section 78-46-2 is renumbered and amended to read:

~~[78-46-2].~~ **78B-1-103. Jurors selected from random cross section --**

Opportunity and obligation to serve.

(1) It is the policy of this state that:

(a) persons selected for jury service be selected at random from a fair cross section of the population of the county~~[-and that]~~;

(b) all qualified citizens have the opportunity in accordance with this chapter to be considered for service; and ~~[have the obligation]~~

(c) all qualified citizens are obligated to serve when summoned ~~[for that purpose]~~, unless excused.

(2) A citizen may not be excluded or exempt from jury service on account of race, color, religion, sex, national origin, age, occupation, disability, or economic status.

Section 4. Section **78B-1-104**, which is renumbered from Section 78-46-5 is renumbered and amended to read:

~~[78-46-5].~~ **78B-1-104. Trial by jury.**

(1) A trial jury consists of:

(a) twelve persons in a capital case;

(b) eight persons in a noncapital first degree felony aggravated murder or other

criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.

(2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

Section 5. Section **78B-1-105**, which is renumbered from Section 78-46-7 is renumbered and amended to read:

[78-46-7]. 78B-1-105. Jurors -- Competency to serve -- Persons not competent to serve as jurors -- Court to determine disqualification.

(1) A person is competent to serve as a juror if the person is:

(a) a citizen of the United States;

(b) 18 years of age or older;

(c) a resident of the county; and

(d) able to read, speak, and understand the English language.

(2) A person who has been convicted of a felony ~~[that]~~ which has not been expunged is not competent to serve as a juror.

(3) The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on:

(a) information provided on the juror qualification form;

(b) an interview with the prospective juror; or

216 (c) other competent evidence.

217 (4) The clerk shall enter the court's determination in the records of the court.

218 Section 6. Section **78B-1-106**, which is renumbered from Section 78-46-10 is
219 renumbered and amended to read:

220 ~~[78-46-10].~~ **78B-1-106. Master jury list -- Inclusive -- Review -- Renewal --**
221 **Public examination.**

222 (1) The Judicial Council shall designate one or more regularly maintained lists of
223 persons residing in each county as the source lists for the master jury list for that county. The
224 master jury list shall be as inclusive of the adult population of the county as is reasonably
225 practicable.

226 (2) The Judicial Council shall by rule provide for the biannual review of the master
227 jury list to evaluate its inclusiveness of the adult population of the county.

228 (3) Not less than once every six months the Administrative Office of the Courts shall
229 renew the master jury list for a county by incorporating any additions, deletions, or
230 amendments to the source lists. The Administrative Office of the Courts shall include any
231 additional source lists designated by the Judicial Council upon the next renewal of the master
232 jury list for a county.

233 (4) The person having custody, possession, or control of any list used in compiling the
234 master jury list shall make the list available to the Administrative Office of the Courts at all
235 reasonable times without charge.

236 Section 7. Section **78B-1-107**, which is renumbered from Section 78-46-12 is
237 renumbered and amended to read:

238 ~~[78-46-12].~~ **78B-1-107. Qualified jury list -- Term of availability -- Juror**
239 **qualification form -- Content -- Joint jury list for court authorized.**

240 (1) Prospective jurors shall be selected at random from the master jury list and, if
241 qualified, placed on the qualified jury list. A prospective juror shall remain on the qualified
242 jury list for no longer than six months or for such shorter period established by rule of the
243 Judicial Council. The qualified jury list may be used by all courts within the county, but no
244 person shall be summoned to serve as a juror in more than one court.

245 (2) The Judicial Council shall by rule govern the process for the qualification of jurors
246 and the selection of qualified jurors for voir dire.

(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:

- (a) the name, address, and daytime telephone number of the prospective juror;
- (b) questions suitable for determining whether the prospective juror is competent under statute to serve as a juror; and
- (c) the person's declaration that the responses to questions on the qualification form are true to the best of the person's knowledge.

Section 8. Section **78B-1-108**, which is renumbered from Section 78-46-14 is renumbered and amended to read:

~~[78-46-14].~~ **78B-1-108. Qualified prospective jurors not exempt from jury service.**

No qualified prospective juror is exempt from jury service.

Section 9. Section **78B-1-109**, which is renumbered from Section 78-46-15 is renumbered and amended to read:

~~[78-46-15].~~ **78B-1-109. Excuse from jury service -- Postponement.**

(1) A person may be excused from jury service by the court upon a showing of undue hardship, public necessity, or that the person is incapable of jury service. The excused period may be for any period for which the grounds exist.

(2) The grounds for excusal from jury service shall be shown by affidavit, sworn testimony, or other competent evidence.

(3) The court may postpone jury service upon a showing of good cause.

Section 10. Section **78B-1-110**, which is renumbered from Section 78-46-19 is renumbered and amended to read:

~~[78-46-19].~~ **78B-1-110. Limitations on jury service.**

In any two-year period, a person ~~[shall]~~ may not be required:

- (1) to serve on more than one grand jury;
- (2) to serve as both a grand and trial juror; or
- (3) to attend court for prospective jury service as a trial juror more than one court day, except if necessary to complete service in a particular case.

Section 11. Section **78B-1-111**, which is renumbered from Section 78-46-29 is

277 renumbered and amended to read:

278 ~~[78-46-29].~~ **78B-1-111. Food allowance for jurors -- Sequestration costs.**

279 (1) Jurors may be provided with a reasonable food allowance under the rules of the
280 Judicial Council.

281 (2) When a jury has been placed in sequestration by order of the court, the necessary
282 expenses for food and lodging shall be provided ~~[under]~~ in accordance with the rules of the
283 Judicial Council.

284 Section 12. Section **78B-1-112**, which is renumbered from Section 78-46-17 is
285 renumbered and amended to read:

286 ~~[78-46-17].~~ **78B-1-112. Jurors -- Preservation of records.**

287 All records and papers compiled in connection with the selection and service of jurors
288 shall be preserved by the clerk for four years, or for any longer period ordered by the court.

289 Section 13. Section **78B-1-113**, which is renumbered from Section 78-46-16 is
290 renumbered and amended to read:

291 ~~[78-46-16].~~ **78B-1-113. Jury not selected in conformity with chapter --**
292 **Procedure to challenge -- Relief available -- Exclusive remedy.**

293 (1) Within seven days after the moving party discovered, or by the exercise of diligence
294 could have discovered the grounds therefore, and in any event before the trial jury is sworn to
295 try the case, a party may move to stay the proceedings or to quash an indictment, or for other
296 appropriate relief, on the ground of substantial failure to comply with this act in selecting a
297 grand or trial jury.

298 (2) Upon motion filed under this section containing a sworn statement of acts which if
299 true would constitute a substantial failure to comply with this act, the moving party may
300 present testimony of the county clerk, the clerk of the court, any relevant records and papers
301 not public or otherwise available used by the jury commission or the clerk, and any other
302 relevant evidence. If the court determines that in selecting either a grand or a trial jury there
303 has been a substantial failure to comply with this act and it appears that actual and substantial
304 injustice and prejudice has resulted or will result to a party in consequence of the failure, the
305 court shall stay the proceedings pending the selection of the jury in conformity with this act,
306 quash an indictment, or grant other appropriate relief.

307 (3) The procedures prescribed by this section are the exclusive means by which a

person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this act.

Section 14. Section **78B-1-114**, which is renumbered from Section 78-46-37 is renumbered and amended to read:

~~[78-46-37].~~ 78B-1-114. Jury fee assessments -- Payment.

(1) The court has discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees against either the plaintiff or defendant or their counsel, or to divide the cost and assess them against both plaintiff and defendant or their counsel, or additional parties plaintiff or defendant, if:

(a) a jury demand has been made and is later withdrawn within the 48 hours preceding the commencement of the trial; or

(b) the case is settled or continued within 48 hours of trial without just cause for not having settled or continued the case prior to the 48-hour period.

(2) The party assessed shall make payment to the clerk of the court within a prescribed period. Payment shall be enforced by contempt proceedings.

(3) The court clerk shall transfer the assessment to the state treasury, or the auditor of the city or county incurring the juror expenses.

Section 15. Section **78B-1-115**, which is renumbered from Section 78-46-20 is renumbered and amended to read:

~~[78-46-20].~~ 78B-1-115. Jurors -- Penalties.

(1) A person who fails to respond timely to questions regarding qualification for jury service shall be in contempt of court and subject to penalties under Title ~~[78]~~ 78B, Chapter ~~[32,]~~ 6, Part 3, Contempt.

(2) A person summoned for jury service who fails to appear or to complete jury service as directed shall be in contempt of court and subject to penalties under Title ~~[78]~~ 78B, Chapter ~~[32,]~~ 6, Part 3, Contempt.

(3) Any person who willfully misrepresents a material fact regarding qualification for, excuse from, or postponement of jury service is guilty of a class C misdemeanor.

Section 16. Section **78B-1-116**, which is renumbered from Section 78-46-21 is renumbered and amended to read:

~~[78-46-21].~~ 78B-1-116. Jurors -- Employer not to discharge or threaten

employee for jury service -- Criminal penalty -- Civil action by employee.

(1) An employer may not deprive an employee of employment, threaten or take any adverse employment action, or otherwise coerce the employee regarding [his] employment because the employee receives a summons, responds to it, serves as a juror, or a grand juror, or attends court for prospective jury or grand jury service.

(2) An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to those benefits under company policies.

(3) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months, or both.

(4) If any employer discharges an employee in violation of this section, the employee within 30 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Section 17. Section **78B-1-117**, which is renumbered from Section 78-46-25 is renumbered and amended to read:

~~[78-46-25].~~ 78B-1-117. Jurors and witnesses -- State payment for jurors and subpoenaed persons -- Appropriations and costs -- Expenses in justice court.

(1) The state is responsible for payment of all fees and expenses authorized by law for prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs in criminal actions in the courts of record and actions in the juvenile court. The state is responsible for payment of all fees and expenses authorized by law for jurors in the courts of record. For ~~[such]~~ these payments, the Judicial Council shall receive an annual appropriation contained in a separate line item appropriation.

(2) If expenses exceed the line item appropriation, the administrator of the courts shall submit a claim against the state to the Board of Examiners and request the board to recommend and submit a supplemental appropriation request to the Legislature for the deficit incurred.

(3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney, and by the county if the action is prosecuted by the county attorney or district attorney.

Section 18. Section **78B-1-118**, which is renumbered from Section 78-46-24 is renumbered and amended to read:

~~[78-46-24].~~ **78B-1-118. Jurors and witnesses -- Judicial Council rules governing fee payment.**

The Judicial Council shall adopt rules governing the method of payment of fees, mileage, and other expenses of jurors and witnesses, authorization for payment, record of payment, and the audit of payment records.

Section 19. Section **78B-1-119**, which is renumbered from Section 78-46-28 is renumbered and amended to read:

~~[78-46-28].~~ **78B-1-119. Jurors and witnesses -- Fees and mileage.**

(1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:

(a) \$18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance; and

(b) if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.

(2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.

(3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.

(4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.

(5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.

(6) There is created within the General Fund, a restricted account known as the CASA

Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in \$18.50 or \$49 increments. The Legislature shall annually appropriate money from the CASA Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting, training, and supervising volunteers for the Court Appointed Special Advocate program established pursuant to Section 78-3a-912.

Section 20. Section **78B-1-120**, which is renumbered from Section 78-46-26 is renumbered and amended to read:

~~[78-46-26].~~ **78B-1-120. Jurors and witnesses -- Fees in criminal cases -- Daily report of attendance.**

Every witness in a criminal case subpoenaed for the state, or for a defendant by order of the court at the expense of the state, and every juror, whether grand or trial, shall, unless temporarily excused, in person report daily to the clerk ~~[his attendance at court from the time of his appearance to the date of his discharge, and no]~~. No per diem shall be allowed for any day upon which attendance is not so reported.

Section 21. Section **78B-1-121**, which is renumbered from Section 78-46-27 is renumbered and amended to read:

~~[78-46-27].~~ **78B-1-121. Jurors and witnesses -- Statement of service of -- Certificate.**

Whenever a grand juror, or a witness for the state before the grand jury, is finally discharged, the foreman of the grand jury shall furnish to the clerk of the district court a statement containing information necessary for the clerk to make the juror's or witness's certificate.

Section 22. Section **78B-1-122**, which is renumbered from Section 78-46-31 is renumbered and amended to read:

~~[78-46-31].~~ **78B-1-122. Jurors and witnesses -- Justice court judge -- Certificate of attendance -- Records and reporting.**

(1) Every justice court judge shall give to each person who has served before him as a juror or as a witness in a criminal cause when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate, in which must be stated:

(a) the name of the juror or witness;

(b) the title of the proceeding;

(c) the number of days in attendance;

(d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and

(e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified [by him] as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw [his] a warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued [by him]. The record shall show all of the facts stated in each certificate. On the first Monday of each month [he shall file with the treasurer] a detailed statement of all certificates issued shall be filed with the treasurer.

Section 23. Section **78B-1-123**, which is renumbered from Section 78-46-41 is renumbered and amended to read:

[78-46-41]. 78B-1-123. Jurors and witnesses -- Limit of time for presentation of certificate.

Any holder of a witness's or juror's certificate specified in this title shall be required to present it to the county treasurer or to the county auditor, as the case may be, of the county where [such] the certificate was issued within one year from the date of its issuance. If the same [shall] is not be presented for payment within that time, it [shall be] is invalid and [shall] will not be paid.

Section 24. Section **78B-1-124**, which is renumbered from Section 78-46-38 is renumbered and amended to read:

[78-46-38]. 78B-1-124. Jurors and witnesses -- Statement of certificates -- Contents -- Payment by state.

(1) At the end of each quarter it shall be the duty of the county treasurer and the county auditor of each county to prepare in duplicate and verify under oath a full and complete itemized statement of all certificates issued by the clerk of the district court since the date of the last statement for mileage and attendance of:

(a) grand jurors[~~, for mileage and attendance of~~];

(b) trial jurors engaged in the trial of criminal causes in the district court[;]; and [for mileage and attendance of]

(c) witnesses summoned by or on behalf of the state in criminal causes in the district court.

(2) The statement shall set forth in detail [the number of] for each certificate[;];

(a) the number of the certificate;

(b) the date [of same,] issued;

(c) the name of the person in whose favor is was issued[;];

(d) the nature of the service rendered[;]; and [such]

(e) any other information as may be necessary and required by the state auditor.

(3) Within 30 days of the end of the quarter one of these statements shall be transmitted to the state auditor and the other [shall be] filed in the office of the county clerk. Upon the timely receipt of this statement [by] the state auditor [he] shall, unless [he finds the same] it is found to be incorrect, draw [his] a warrant in favor of the county treasurer upon the state treasurer for the whole amount of jurors' and witnesses' certificates as shown by the statement, and [shall] transmit [the same] it to the county treasurer.

(4) The county treasurer shall hold the funds drawn from the state treasury upon the certificates for mileage and attendance of jurors and witnesses as a separate fund for the redemption of jurors' and witnesses' certificates.

Section 25. Section **78B-1-125**, which is renumbered from Section 78-46-39 is renumbered and amended to read:

[78-46-39]. 78B-1-125. Jurors and witnesses -- Certifying excessive fees a felony.

[Every] Any clerk or judge of any court, county attorney, district attorney, or other officer who [shall certify] certifies false information as a fact [any matter which he knows to be untrue], whereby any witness or juror shall be allowed a greater sum than [he would] otherwise [be] entitled to under the provisions of this title, is guilty of a felony.

Section 26. Section **78B-1-126**, which is renumbered from Section 78-46-40 is renumbered and amended to read:

[78-46-40]. 78B-1-126. Jurors and witnesses -- Purchase of certificate forbidden -- Penalty.

(1) No person connected officially with any of the district courts of this state, and no state, district, county or precinct officer, shall purchase or cause to be purchased any certificate issued to any juror or witness under the provisions of this title.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor.

Section 27. Section **78B-1-127**, which is renumbered from Section 78-24-2 is renumbered and amended to read:

[78-24-2]. 78B-1-127. Witnesses -- Competency.

Every person is competent to be a witness except as otherwise provided in the Utah Rules of Evidence.

Section 28. Section **78B-1-128**, which is renumbered from Section 78-24-1 is renumbered and amended to read:

[78-24-1]. 78B-1-128. Who may be witnesses -- Jury to judge credibility.

(1) All persons, without exception, otherwise than as specified in this ~~[chapter]~~ part, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses.

(2) Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief~~[-, although, in every case the]~~

(3) The credibility of ~~[the]~~ a witness may be ~~[drawn in question,]~~ questioned by:

(a) the manner in which he testifies~~[-, by]~~;

(b) the character of his testimony~~[-, or by]~~;

(c) evidence affecting his character for truth, honesty or integrity~~[-, or by]~~;

(d) his motives~~[-]~~; or by

(e) contradictory evidence~~[-, and the]~~.

(4) The jury are the exclusive judges of ~~[his]~~ the person's credibility.

Section 29. Section **78B-1-129**, which is renumbered from Section 78-24-5 is renumbered and amended to read:

[78-24-5]. 78B-1-129. Witnesses -- Subpoena defined.

The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring ~~[his]~~ the person's attendance at a particular time and place to testify as a witness. ~~[It]~~ The person may also ~~[require him]~~ be required to bring ~~[with~~

525 ~~him]~~ any books, documents or other things under ~~[his]~~ the person's control which ~~[he]~~ is
 526 ~~[bound by law]~~ required to be produce in evidence.

527 Section 30. Section **78B-1-130**, which is renumbered from Section 78-24-6 is
 528 renumbered and amended to read:

529 ~~[78-24-6].~~ **78B-1-130. Witnesses -- Duty when served with subpoena.**

530 A witness served with a subpoena ~~[must]~~ shall:

531 (1) attend at the time appointed with any papers ~~[under his control]~~ required by the
 532 subpoena~~[-and]~~;

533 (2) answer all pertinent and legal questions; and~~[-]~~

534 (3) unless sooner discharged, ~~[must]~~ remain until the testimony is closed.

535 Section 31. Section **78B-1-131**, which is renumbered from Section 78-24-7 is
 536 renumbered and amended to read:

537 ~~[78-24-7].~~ **78B-1-131. Witnesses -- Liability to forfeiture and damages.**

538 A witness ~~[disobeying]~~ who disobeys a subpoena shall, in addition to any penalty
 539 imposed for contempt, be liable to the party aggrieved in the sum of \$100, and all damages
 540 ~~[which he may sustain]~~ sustained by the failure of the witness to attend~~[-which forfeiture].~~
 541 Forfeiture and damages may be recovered in a civil action.

542 Section 32. Section **78B-1-132**, which is renumbered from Section 78-24-3 is
 543 renumbered and amended to read:

544 ~~[78-24-3].~~ **78B-1-132. Witnesses -- Judge or juror may be witness --**
 545 **Procedure.**

546 The judge ~~[himself]~~ or any juror may be called as a witness by either party~~[-but in such~~
 547 ~~case it].~~ It is in the discretion of the court to order the trial to be postponed ~~[or]~~, suspended,
 548 ~~[and to]~~ or take place before another judge or jury.

549 Section 33. Section **78B-1-133**, which is renumbered from Section 78-24-9 is
 550 renumbered and amended to read:

551 ~~[78-24-9].~~ **78B-1-133. Witnesses -- Duty to answer questions -- Privilege.**

552 (1) A witness ~~[must]~~ shall answer all questions legal and pertinent to the matter in
 553 issue, although ~~[his]~~ an answer may establish a claim against ~~[himself; but he]~~ the witness.

554 (2) A witness need not give an answer which will ~~[have a tendency to]~~ subject him to
 555 punishment for a felony~~[-nor]~~.

(3) A witness need ~~[he]~~ not give an answer which will ~~[have a direct tendency to]~~ degrade his character, unless it is to the very fact in issue or to a fact from which the fact in issue would be presumed. ~~[But a]~~

(4) A witness must answer as to the fact of ~~[his]~~ any previous conviction of a felony.

Section 34. Section **78B-1-134**, which is renumbered from Section 78-24-10 is renumbered and amended to read:

~~[78-24-10]. 78B-1-134. Witnesses -- Proceedings in aid of or supplemental to attachment, garnishment, or execution.~~

(1) Notwithstanding the provisions of Section ~~[78-24-9]~~ 78B-1-133, a party or a witness examined in proceedings in aid of or supplemental to attachment, garnishment, or execution is not excused from answering a question on the ground that ~~[his]~~:

(a) the answer will tend to convict him of the commission of a fraud~~[, or to]~~:

(b) the answer will prove ~~[that]~~ he has been a party or privy to, or has knowledge of, a conveyance, assignment, transfer or other disposition of property concerned for any purpose; ~~[or on the ground that]~~

(c) he or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. ~~[But an]~~

(2) An answer cannot be used as evidence against the person so answering in a criminal action or proceeding, except in an action for perjury against ~~[him]~~ the person for falsely testifying.

Section 35. Section **78B-1-135**, which is renumbered from Section 78-24-11 is renumbered and amended to read:

~~[78-24-11]. 78B-1-135. Witnesses -- Rights.~~

It is the right of a witness to be protected from irrelevant, improper or insulting questions, and from harsh or insulting demeanor, to be detained only so long as the interests of justice require it, and to be examined only as to matters legal and pertinent to the issue.

Section 36. Section **78B-1-136**, which is renumbered from Section 78-24-8 is renumbered and amended to read:

~~[78-24-8]. 78B-1-136. Witnesses -- Privileged communications.~~

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of ~~[his]~~ the client, be examined as to any communication made by the client to ~~[him]~~ the attorney or ~~[his]~~ any advice given regarding the communication in the course of ~~[his]~~ the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of ~~[his employer]~~ the attorney, concerning any fact, the knowledge of which has been acquired ~~[in his capacity]~~ as an employee.

(3) A ~~[clergyman]~~ member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to ~~[him]~~ either of them in ~~[his]~~ their professional character in the course of discipline enjoined by the church to which ~~[he belongs]~~ they belong.

(4) A physician or surgeon cannot, without the consent of ~~[his]~~ the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable ~~[him]~~ the physician or surgeon to prescribe or act for the patient. However, this privilege shall be ~~[deemed to be]~~ waived by the patient in an action in which the patient places ~~[his]~~ their medical condition at issue as an element or factor of ~~[his]~~ the claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports,

records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made ~~[to him]~~ in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section ~~[78-3e-3]~~ 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section ~~[78-3e-3]~~ 77-38-203 made by the victim.

Section 37. Section **78B-1-137**, which is renumbered from Section 78-24-12 is renumbered and amended to read:

~~[78-24-12].~~ **78B-1-137. Witnesses -- Exempt from arrest in civil action.**

Every person who has been in good faith served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, is exempt from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom.

Section 38. Section **78B-1-138**, which is renumbered from Section 78-24-13 is renumbered and amended to read:

~~[78-24-13].~~ **78B-1-138. Witnesses -- Unlawful arrest -- Void -- Damages recoverable.**

The arrest of a witness contrary to Section ~~[78-24-12]~~ 78B-1-137 is void, and when willfully made is a contempt of the court~~[, and the]~~. The person making [it] the arrest is responsible to the witness arrested for double the amount of the damages which may be assessed against ~~[him]~~ the witness, and is also liable to an action at the suit of the party serving the witness with the subpoena for the damages sustained by ~~[him]~~ the party in consequence of the arrest.

Section 39. Section **78B-1-139**, which is renumbered from Section 78-24-14 is renumbered and amended to read:

~~[78-24-14].~~ **78B-1-139. Liability of officer making arrest.**

(1) An officer is not liable for making the arrest in ignorance of the facts creating the exemption, but is liable for any subsequent detention of the witness, if ~~[such]~~ the witness claims the exemption and makes an affidavit stating:

(a) ~~[that]~~ he has been served with a subpoena to attend as a witness before a court,

649 officer or other person, specifying the same, the place of attendance and the action or
650 proceeding in which the subpoena was issued;

651 (b) ~~[that]~~ he has not ~~[thus]~~ been served by his own procurement, with the intention of
652 avoiding an arrest; and

653 (c) ~~[that]~~ he is at the time going to the place of attendance, ~~[or]~~ returning therefrom, or
654 remaining there in obedience to the subpoena.

655 (2) The affidavit may be taken by the officer, and exonerates him from liability for
656 discharging the witness when arrested.

657 Section 40. Section **78B-1-140**, which is renumbered from Section 78-24-15 is
658 renumbered and amended to read:

659 **[78-24-15]. 78B-1-140. Witnesses -- Discharge when unlawfully arrested.**

660 The court or officer issuing the subpoena, and the court or officer before whom the
661 attendance is required, may discharge the witness from an arrest made in violation of Section
662 ~~[78-24-12]~~ 78B-1-137. If the court has adjourned before the arrest or before application for the
663 discharge, a judge of the court may grant the discharge.

664 Section 41. Section **78B-1-141**, which is renumbered from Section 78-24-16 is
665 renumbered and amended to read:

666 **[78-24-16]. 78B-1-141. Witnesses -- Oaths -- Who may administer.**

667 Every court, every judge, clerk and deputy clerk of any court, every justice, every notary
668 public, and every officer or person authorized to take testimony in any action or proceeding, or
669 to decide upon evidence, has the power to administer oaths or affirmations.

670 Section 42. Section **78B-1-142**, which is renumbered from Section 78-24-17 is
671 renumbered and amended to read:

672 **[78-24-17]. 78B-1-142. Witnesses -- Form of oath.**

673 (1) An oath or affirmation in an action or proceeding may be administered~~[, the person~~
674 ~~who swears or affirms expressing his assent when addressed,]~~ in the following form:

675 You do solemnly swear (or affirm) that the evidence you shall give in this issue (or
676 matter) pending between ____ and ____ shall be the truth, the whole truth and nothing but the
677 truth, so help you God (or, under the pains and penalties of perjury).

678 **(2) The person swearing or affirming shall express assent when addressed.**

679 Section 43. Section **78B-1-143**, which is renumbered from Section 78-24-18 is

680 renumbered and amended to read:

681 **~~[78-24-18]. 78B-1-143. Witnesses -- Affirmation or declaration instead of oath~~**
682 **allowed.**

683 Any person may ~~[at his option]~~, instead of taking an oath, opt to make ~~[his]~~ a solemn
684 affirmation or declaration, by assenting, when addressed in the following form:

685 "You do solemnly affirm (or declare) that... ." etc., as in Section ~~[78-24-17]~~ 78B-1-142.

686 Section 44. Section **78B-1-144**, which is renumbered from Section 78-24-19 is
687 renumbered and amended to read:

688 **~~[78-24-19]. 78B-1-144. Witnesses -- Variance in form of swearing to suit beliefs.~~**

689 (1) Whenever the court before which a person is offered as a witness is satisfied that
690 ~~[he]~~ the person has a peculiar mode of swearing, connected with or in addition to the usual
691 form, which in ~~[his]~~ the person's opinion is more solemn or obligatory, the court may in its
692 discretion adopt that mode.

693 ~~[If a]~~ (2) A person who ~~[is sworn]~~ believes in ~~[any]~~ a religion other than the Christian
694 religion~~[, he]~~ may be sworn according to the ~~[peculiar]~~ particular ceremonies of ~~[his]~~ their
695 religion, if there are any.

696 Section 45. Section **78B-1-145**, which is renumbered from Section 78-24-4 is
697 renumbered and amended to read:

698 **~~[78-24-4]. 78B-1-145. Witnesses -- Interpreters and translators -- Subpoena --~~**
699 **Contempt -- Costs.**

700 (1) When a witness does not understand and speak the English language, an interpreter
701 or translator must be sworn in to interpret. Any person may be subpoenaed by any court or
702 judge to appear before ~~[such]~~ the court or judge to act as an interpreter or translator in any
703 action or proceeding. Any person so subpoenaed who fails to attend at the time and place
704 named is guilty of a contempt.

705 (2) The Judicial Council may establish a fee for the issuance and renewal of a license
706 of a certified court interpreter. Any fee established under this section shall be deposited as a
707 nonlapsing dedicated credit to the Judicial Council.

708 (3) If the court appoints an interpreter or translator, the court may assess all or part of
709 the fees and costs of the interpreter or translator against the person for whom the service is
710 provided. The court ~~[shall]~~ may not assess interpreter or translator fees or costs against a

711 person found to be impecunious.

712 Section 46. Section **78B-1-146**, which is renumbered from Section 78-46-30 is
713 renumbered and amended to read:

714 ~~[78-46-30].~~ **78B-1-146. Witnesses -- Fees in civil cases -- How paid -- Taxed as**
715 **costs.**

716 (1) The fees and compensation of witnesses in all civil causes shall be paid by the party
717 who causes the witnesses to attend. A ~~[witness]~~ person is not obliged to attend court in a civil
718 cause when subpoenaed unless ~~[his]~~ the person's:

719 (a) fees for one day's attendance are tendered or paid ~~[to him]~~ on demand~~[-];~~ or ~~[his]~~

720 (b) fees for attendance for each day are tendered or paid ~~[to him]~~ on demand.

721 (2) The fees of witnesses paid in civil causes may be taxed as costs against the losing
722 party.

723 Section 47. Section **78B-1-147**, which is renumbered from Section 78-46-35 is
724 renumbered and amended to read:

725 ~~[78-46-35].~~ **78B-1-147. Witnesses -- Only one fee per day allowed.**

726 No witness shall receive fees in more than one criminal cause on the same day.

727 Section 48. Section **78B-1-148**, which is renumbered from Section 78-46-34 is
728 renumbered and amended to read:

729 ~~[78-46-34].~~ **78B-1-148. Witnesses -- Officials subpoenaed not entitled to fee or**
730 **per diem -- Exception.**

731 No officer of the United States, or of the State of Utah, or of any county, incorporated
732 city or town within the State of Utah, ~~[shall]~~ may receive any witness fee or per diem when
733 testifying in a criminal proceeding unless the officer is required to testify at a time other than
734 during ~~[his or her]~~ normal working hours.

735 Section 49. Section **78B-1-149**, which is renumbered from Section 78-46-32 is
736 renumbered and amended to read:

737 ~~[78-46-32].~~ **78B-1-149. Witnesses -- When criminal defense witness may be**
738 **called at expense of state.**

739 A witness for a defendant in a criminal cause may not be subpoenaed at the expense of
740 the state, county, or city, except upon order of the court. The order shall be made only upon
741 affidavit of the defendant, showing:

(1) the defendant is impecunious and unable to pay the per diems of the witness;

(2) the evidence of the witness is material for defendant's defense as ~~[he is]~~ advised by his counsel, if he has counsel; and

(3) the defendant cannot safely proceed to trial without the witness.

Section 50. Section **78B-1-150**, which is renumbered from Section 78-46-33 is renumbered and amended to read:

~~[78-46-33].~~ **78B-1-150. Witnesses -- Expenses for expert witnesses.**

(1) The court may appoint any expert witness agreed upon by the parties or of its own selection. The court shall inform the expert of required duties in writing and a copy shall be filed with the court record.

(2) The appointed expert shall advise the court and the parties of findings and may be called to testify by the court or by any party. The expert witness is subject to cross-examination by each party.

(3) The court shall determine the reasonable compensation of the expert and order payment. The parties may call expert witnesses of their own at their own expense. Upon a showing that a defendant is financially unable to pay the compensation of an expert whose services are necessary for an adequate defense, the compensation shall be paid as if the expert were called on behalf of the prosecution.

(4) Payment by the court for an expert witness in a criminal case is limited to the fee and mileage allowance for witnesses under Section 78-46-28 and necessary meals and lodging expenses as provided by rule of the Judicial Council. Compensation of an expert witness beyond the statutory fee and mileage allowance shall be paid by the parties under Subsection (3).

Section 51. Section **78B-1-151**, which is renumbered from Section 78-24-20 is renumbered and amended to read:

~~[78-24-20].~~ **78B-1-151. Witnesses -- Prohibition of expert witness contingent fees in civil actions.**

(1) As used in this section, "contingent fee agreement" means an agreement for the provision of testimony or other evidence and related services by an expert witness in a civil action that specifies:

(a) the payment of compensation to the expert witness for the testimony, other

evidence, and services is contingent, in whole or in part, upon a judgment being rendered in favor of the plaintiff or defendant in a civil action, upon a favorable settlement being obtained by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being awarded in a judgment or settlement damages in at least a specified amount; and

(b) upon satisfaction of the contingency described in Subsection (1)(a), the compensation to be paid to the expert witness is in a fixed amount or an amount to be determined by a specified formula, including, but not limited to, a percentage of a judgment rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the plaintiff.

(2) A plaintiff or defendant in a civil action may not engage an expert witness by means of a contingent fee agreement unless approval is sought and received from the court.

(3) An expert witness may be engaged by the plaintiff or defendant on the contingency that the expert actually qualify as an expert. Once the witness is qualified as an expert Subsection (2) applies to his continued participation in the action.

Section 52. Section **78B-1-201**, which is renumbered from Section 78-24a-1 is renumbered and amended to read:

Part 2. Interpreters for Hearing Impaired

~~[78-24a-1].~~ 78B-1-201. Definitions.

As used in this ~~[chapter]~~ part:

(1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, authority, department, agency, legislative body, or of any proceeding of any nature where a qualified interpreter is required under this ~~[act]~~ part.

(2) "Hearing-impaired person" and "hearing-impaired parent" means a deaf or hard of hearing person who, because of sensory or environmental conditions, requires the assistance of a qualified interpreter or other special assistance for communicative purposes.

(3) "Necessary steps" or "necessary services" include provisions of qualified interpreters, lip reading, pen and paper, typewriters, closed-circuit television with closed-caption translations, computers with print-out capability, and telecommunications devices for the deaf or similar devices.

(4) "Qualified interpreter" means a sign language or oral interpreter as provided in Sections ~~[78-24a-3]~~ 78B-1-203 and ~~[78-24a-6]~~ 78B-1-206 of this ~~[act]~~ part.

Section 53. Section **78B-1-202**, which is renumbered from Section 78-24a-2 is renumbered and amended to read:

~~[78-24a-2].~~ **78B-1-202. Proceedings at which interpreter is to be provided for hearing impaired.**

(1) If a hearing-impaired person is a party or witness at any stage of any judicial or quasi-judicial proceeding in this state or in its political subdivisions, ~~[including [but not limited to]~~ civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing-impaired person may be subjected to confinement or criminal sanction~~]~~, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired person does not understand sign language, the appointing authority shall take necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.

(2) If a juvenile whose parent or parents are hearing-impaired is brought before a court for any reason whatsoever, the court shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired parent and to interpret the hearing-impaired parent's testimony. If the hearing-impaired parent or parents do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.

(3) In any hearing, proceeding, or other program or activity of any department, board, licensing authority, commission, or administrative agency of the state or of its political subdivisions, the appointing authority shall appoint and pay for a qualified interpreter for the hearing-impaired participants if the interpreter is not otherwise compensated for those services. If the hearing-impaired participants do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that hearing-impaired persons may effectively and accurately communicate in the proceeding.

(4) If a hearing-impaired person is a witness before any legislative committee or subcommittee, or legislative research or interim committee or subcommittee or commission authorized by the state Legislature or by the legislative body of any political subdivision of the state, the appointing authority shall appoint and pay for a qualified interpreter to interpret the

proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired witness does not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that hearing-impaired witness may effectively and accurately communicate in the proceeding.

(5) If it is the policy and practice of a court of this state or of its political subdivisions to appoint counsel for indigent people, the appointing authority shall appoint and pay for a qualified interpreter or other necessary services for hearing-impaired, indigent people to assist in communication with counsel in all phases of the preparation and presentation of the case.

(6) If a hearing-impaired person is involved in administrative, legislative, or judicial proceedings, the appointing authority shall recognize that family relationship between the particular hearing-impaired person and an interpreter may constitute a possible conflict of interest and select a qualified interpreter who will be impartial in the proceedings.

Section 54. Section **78B-1-203**, which is renumbered from Section 78-24a-3 is renumbered and amended to read:

~~[78-24a-3].~~ 78B-1-203. Effectiveness of interpreter determined.

Before appointing an interpreter, the appointing authority shall make a preliminary determination, on the basis of the proficiency level established by the Utah division of rehabilitation services and on the basis of the hearing-impaired person's testimony, that the interpreter is able to accurately communicate with and translate information to and from the hearing-impaired person involved. If the interpreter is not able to provide effective communication with the hearing-impaired person, the appointing authority shall appoint another qualified interpreter.

Section 55. Section **78B-1-204**, which is renumbered from Section 78-24a-4 is renumbered and amended to read:

~~[78-24a-4].~~ 78B-1-204. Appointment of more qualified interpreter.

If a qualified interpreter is unable to render a satisfactory interpretation, the appointing authority shall appoint a more qualified interpreter.

Section 56. Section **78B-1-205**, which is renumbered from Section 78-24a-5 is renumbered and amended to read:

~~[78-24a-5].~~ 78B-1-205. Readiness of interpreter prerequisite to commencement of proceeding.

If an interpreter is required to be appointed under this ~~[act]~~ part, the appointing authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure effective communication with the hearing-impaired participants.

Section 57. Section **78B-1-206**, which is renumbered from Section 78-24a-6 is renumbered and amended to read:

~~[78-24a-6].~~ **78B-1-206. List of qualified interpreters -- Use -- Appointment of another.**

(1) The Utah division of rehabilitation services shall establish, maintain, update, and distribute a list of qualified interpreters.

(2) When an interpreter is required under this ~~[act]~~ part, the appointing authority shall use one of the interpreters on the list provided by the Utah division of rehabilitation services. If none of the listed interpreters are available or are able to provide effective interpreting with the particular hearing-impaired person, then the appointing authority shall appoint another qualified interpreter who is able to accurately and simultaneously communicate with and translate information to and from the particular hearing-impaired person involved.

Section 58. Section **78B-1-207**, which is renumbered from Section 78-24a-7 is renumbered and amended to read:

~~[78-24a-7].~~ **78B-1-207. Oath of interpreter.**

Before he or she begins to interpret, every interpreter appointed under this ~~[act]~~ part shall take an oath that he or she will make a true interpretation in an understandable manner to the best of his or her skills and judgment.

Section 59. Section **78B-1-208**, which is renumbered from Section 78-24a-8 is renumbered and amended to read:

~~[78-24a-8].~~ **78B-1-208. Compensation of interpreter.**

An interpreter appointed under this ~~[act]~~ part is entitled to a reasonable fee for his or her services, including waiting time and reimbursement for necessary travel and subsistence expenses. The fee shall be based on a fee schedule for interpreters recommended by the division of rehabilitation services or on prevailing market rates. Reimbursement for necessary travel and subsistence expenses shall be at rates provided by law for state employees generally. Compensation for interpreter services shall be paid by the appointing authority if the interpreter is not otherwise compensated for those services.

Section 60. Section **78B-1-209**, which is renumbered from Section 78-24a-9 is renumbered and amended to read:

~~[78-24a-9].~~ 78B-1-209. Waiver of right to interpreter.

The right of a hearing-impaired person to an interpreter may not be waived, except by a hearing-impaired person who requests a waiver in writing. The waiver is subject to the approval of counsel to the hearing-impaired person, if existent, and is subject to the approval of the appointing authority. In no event may the failure of the hearing-impaired person to request an interpreter be considered a waiver of that right.

Section 61. Section **78B-1-210**, which is renumbered from Section 78-24a-10 is renumbered and amended to read:

~~[78-24a-10].~~ 78B-1-210. Privileged communications.

If a hearing-impaired person communicates through an interpreter to any person under such circumstances that the communication would be privileged and the person could not be compelled to testify as to the communications, this privilege shall apply to the interpreter as well.

Section 62. Section **78B-1-211**, which is renumbered from Section 78-24a-11 is renumbered and amended to read:

~~[78-24a-11].~~ 78B-1-211. Video recording of testimony of hearing-impaired person.

The appointing authority, on his or her own motion or on the motion of a party to the proceedings, may order that the testimony of the hearing-impaired person and its interpretation be electronically recorded by a video recording device for use in verification of the official transcript of the proceedings.

Section 63. Repealer.

This bill repeals:

Section 78-46-3, Discrimination prohibited.

Section 78-46-8, Determination on juror qualification.

Section 78-46-36, Interpreters' fees taxed as costs.